

Calendar No. 471

106TH CONGRESS
2D SESSION

H. R. 1658

AN ACT

To provide a more just and uniform procedure for
Federal civil forfeitures, and for other purposes.

MARCH 23, 2000

Reported with an amendment

Calendar No. 471

106TH CONGRESS
2D SESSION**H. R. 1658**

IN THE SENATE OF THE UNITED STATES

JUNE 28, 1999

Received; read twice and referred to the Committee on the Judiciary

MARCH 23, 2000

Reported by Mr. HATCH, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]**AN ACT**

To provide a more just and uniform procedure for Federal
civil forfeitures, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Civil Asset Forfeiture
5 Reform Act”.

6 **SEC. 2. CREATION OF GENERAL RULES RELATING TO CIVIL**
7 **FORFEITURE PROCEEDINGS.**

8 Section 981 of title 18, United States Code, is
9 amended—

1 (1) by inserting after subsection (i) the fol-
2 lowing:

3 “(j)(1)(A) In any nonjudicial civil forfeiture pro-
4 ceeding under a civil forfeiture statute, with respect to
5 which the agency conducting a seizure of property must
6 give written notice to interested parties, such notice shall
7 be given as soon as practicable and in no case more than
8 60 days after the later of the date of the seizure or the
9 date the identity of the interested party is first known or
10 discovered by the agency, except that the court may extend
11 the period for filing a notice for good cause shown.

12 “(B) A person entitled to written notice in such pro-
13 ceeding to whom written notice is not given may on motion
14 void the forfeiture with respect to that person’s interest
15 in the property, unless the agency shows—

16 “(i) good cause for the failure to give notice to
17 that person; or

18 “(ii) that the person otherwise had actual notice
19 of the seizure.

20 “(C) If the Government does not provide notice of
21 a seizure of property in accordance with subparagraph
22 (A), it shall return the property and may not take any
23 further action to effect the forfeiture of such property.

1 “(2)(A) Any person claiming property seized in a
2 nonjudicial forfeiture proceeding may file a claim with the
3 appropriate official after the seizure.

4 “(B) A claim under subparagraph (A) may not be
5 filed later than 30 days after—

6 “(i) the date of final publication of notice of
7 seizure; or

8 “(ii) in the case of a person entitled to written
9 notice, the date that notice is received.

10 “(C) The claim shall state the claimant’s interest in
11 the property.

12 “(D) Not later than 90 days after a claim has been
13 filed, the Attorney General shall file a complaint for for-
14 feiture in the appropriate court or return the property,
15 except that a court in the district in which the complaint
16 will be filed may extend the period for filing a complaint
17 for good cause shown or upon agreement of the parties.

18 “(E) If the Government does not file a complaint for
19 forfeiture of property in accordance with subparagraph
20 (D), it shall return the property and may not take any
21 further action to effect the forfeiture of such property.

22 “(F) Any person may bring a claim under subpara-
23 graph (A) without posting bond with respect to the prop-
24 erty which is the subject of the claim.

1 “(3)(A) In any case where the Government files in
2 the appropriate United States district court a complaint
3 for forfeiture of property, any person claiming an interest
4 in the seized property may file a claim asserting such per-
5 son’s interest in the property within 30 days of service
6 of the Government’s complaint or, where applicable, within
7 30 days of alternative publication notice.

8 “(B) A person asserting an interest in seized property
9 in accordance with subparagraph (A) shall file an answer
10 to the Government’s complaint for forfeiture within 20
11 days of the filing of the claim.

12 “(4)(A) If the person filing a claim is financially un-
13 able to obtain representation by counsel, the court may
14 appoint counsel to represent that person with respect to
15 the claim.

16 “(B) In determining whether to appoint counsel to
17 represent the person filing the claim, the court shall take
18 into account such factors as—

19 “(i) the claimant’s standing to contest the for-
20 feiture; and

21 “(ii) whether the claim appears to be made in
22 good faith or to be frivolous.

23 “(C) The court shall set the compensation for that
24 representation, which shall be equivalent to that provided
25 for court-appointed representation under section 3006A of

1 this title, and to pay such cost there are authorized to
2 be appropriated such sums as are necessary as an addition
3 to the funds otherwise appropriated for the appointment
4 of counsel under such section.

5 “(5) In all suits or actions brought under any civil
6 forfeiture statute for the civil forfeiture of any property,
7 the burden of proof is on the United States Government
8 to establish, by clear and convincing evidence, that the
9 property is subject to forfeiture.

10 “(6)(A) An innocent owner’s interest in property
11 shall not be forfeited under any civil forfeiture statute.

12 “(B) With respect to a property interest in existence
13 at the time the illegal conduct giving rise to forfeiture took
14 place, the term ‘innocent owner’ means an owner who—

15 “(i) did not know of the conduct giving rise to
16 forfeiture; or

17 “(ii) upon learning of the conduct giving rise to
18 the forfeiture, did all that reasonably could be ex-
19 pected under the circumstances to terminate such
20 use of the property.

21 “(C) With respect to a property interest acquired
22 after the conduct giving rise to the forfeiture has taken
23 place, the term ‘innocent owner’ means a person who, at
24 the time that person acquired the interest in the property,
25 was—

1 “(i)(I) a bona fide purchaser or seller for value
2 (including a purchaser or seller of goods or services
3 for value); or

4 “(H) a person who acquired an interest in prop-
5 erty through probate or inheritance; and

6 “(ii) at the time of the purchase or acquisition
7 reasonably without cause to believe that the property
8 was subject to forfeiture.

9 “(D) Where the property subject to forfeiture is real
10 property, and the claimant uses the property as the claim-
11 ant’s primary residence and is the spouse or minor child
12 of the person who committed the offense giving rise to the
13 forfeiture, an otherwise valid innocent owner claim shall
14 not be denied on the ground that the claimant acquired
15 the interest in the property—

16 “(i) in the case of a spouse, through dissolution
17 of marriage or by operation of law; or

18 “(ii) in the case of a minor child, as an inherit-
19 ance upon the death of a parent;

20 and not through a purchase. However, the claimant must
21 establish, in accordance with subparagraph (C), that at
22 the time of the acquisition of the property interest, the
23 claimant was reasonably without cause to believe that the
24 property was subject to forfeiture.

25 “(7) For the purposes of paragraph (6)—

1 “(A) ways in which a person may show that
2 such person did all that reasonably can be expected
3 may include demonstrating that such person, to the
4 extent permitted by law—

5 “(i) gave timely notice to an appropriate
6 law enforcement agency of information that led
7 the person to know the conduct giving rise to
8 a forfeiture would occur or has occurred; and

9 “(ii) in a timely fashion revoked or at-
10 tempted to revoke permission for those engag-
11 ing in such conduct to use the property or took
12 reasonable actions in consultation with a law
13 enforcement agency to discourage or prevent
14 the illegal use of the property; and

15 “(B) in order to do all that can reasonably be
16 expected, a person is not required to take steps that
17 the person reasonably believes would be likely to
18 subject any person (other than the person whose
19 conduct gave rise to the forfeiture) to physical dan-
20 ger.

21 ~~“(8) As used in this subsection:~~

22 ~~“(1) The term ‘civil forfeiture statute’ means~~
23 ~~any provision of Federal law (other than the Tariff~~
24 ~~Act of 1930 or the Internal Revenue Code of 1986)~~
25 ~~providing for the forfeiture of property other than as~~

1 a sentence imposed upon conviction of a criminal of-
2 fense.

3 “(2) The term ‘owner’ means a person with an
4 ownership interest in the specific property sought to
5 be forfeited, including a leasehold, lien, mortgage,
6 recorded security device, or valid assignment of an
7 ownership interest. Such term does not include—

8 “(i) a person with only a general unse-
9 cured interest in, or claim against, the property
10 or estate of another;

11 “(ii) a bailee unless the bailor is identified
12 and the bailee shows a colorable legitimate in-
13 terest in the property seized; or

14 “(iii) a nominee who exercises no dominion
15 or control over the property.

16 “(k)(1) A claimant under subsection (j) is entitled to
17 immediate release of seized property if—

18 “(A) the claimant has a possessory interest in
19 the property;

20 “(B) the continued possession by the United
21 States Government pending the final disposition of
22 forfeiture proceedings will cause substantial hard-
23 ship to the claimant, such as preventing the func-
24 tioning of a business, preventing an individual from
25 working, or leaving an individual homeless; and

1 “(C) the claimant’s likely hardship from the
2 continued possession by the United States Govern-
3 ment of the seized property outweighs the risk that
4 the property will be destroyed, damaged, lost, con-
5 cealed, or transferred if it is returned to the claim-
6 ant during the pendency of the proceeding.

7 “(2) A claimant seeking release of property under
8 this subsection must request possession of the property
9 from the appropriate official, and the request must set
10 forth the basis on which the requirements of paragraph
11 (1) are met.

12 “(3) If within 10 days after the date of the request
13 the property has not been released, the claimant may file
14 a motion or complaint in any district court that would
15 have jurisdiction of forfeiture proceedings relating to the
16 property setting forth—

17 “(A) the basis on which the requirements of
18 paragraph (1) are met; and

19 “(B) the steps the claimant has taken to secure
20 release of the property from the appropriate official.

21 “(4) If a motion or complaint is filed under para-
22 graph (3), the district court shall order that the property
23 be returned to the claimant, pending completion of pro-
24 ceedings by the United States Government to obtain for-
25 feiture of the property, if the claimant shows that the re-

1 requirements of paragraph (1) have been met. The court
 2 may place such conditions on release of the property as
 3 it finds are appropriate to preserve the availability of the
 4 property or its equivalent for forfeiture.

5 “(5) The district court shall render a decision on a
 6 motion or complaint filed under paragraph (3) no later
 7 than 30 days after the date of the filing, unless such 30-
 8 day limitation is extended by consent of the parties or by
 9 the court for good cause shown.”; and

10 (2) by redesignating existing subsection (j) as
 11 subsection (1).

12 **SEC. 3. COMPENSATION FOR DAMAGE TO SEIZED PROP-**
 13 **ERTY.**

14 (a) TORT CLAIMS ACT.—Section 2680(e) of title 28,
 15 United States Code, is amended—

16 (1) by striking “law-enforcement” and inserting
 17 “law enforcement”; and

18 (2) by inserting before the period the following:

19 “, except that the provisions of this chapter and sec-
 20 tion 1346(b) of this title do apply to any claim based
 21 on the destruction, injury, or loss of goods, merchan-
 22 dise, or other property, while in the possession of
 23 any officer of customs or excise or any other law en-
 24 forcement officer, if the property was seized for the
 25 purpose of forfeiture under any provision of Federal

1 law (other than the Tariff Act of 1930 or the Inter-
2 nal Revenue Code of 1986) providing for the for-
3 feiture of property other than as a sentence imposed
4 upon conviction of a criminal offense but the interest
5 of the claimant is not forfeited”.

6 (b) DEPARTMENT OF JUSTICE.—

7 (1) IN GENERAL.—With respect to a claim that
8 cannot be settled under chapter 171 of title 28,
9 United States Code, the Attorney General may set-
10 tle, for not more than \$50,000 in any case, a claim
11 for damage to, or loss of, privately owned property
12 caused by an investigative or law enforcement officer
13 (as defined in section 2680(h) of title 28, United
14 States Code) who is employed by the Department of
15 Justice acting within the scope of his or her employ-
16 ment.

17 (2) LIMITATIONS.—The Attorney General may
18 not pay a claim under paragraph (1) that—

19 (A) is presented to the Attorney General
20 more than 1 year after it occurs; or

21 (B) is presented by an officer or employee
22 of the United States Government and arose
23 within the scope of employment.

1 **SEC. 4. PRE-JUDGMENT AND POST-JUDGMENT INTEREST.**

2 Section 2465 of title 28, United States Code, is
3 amended—

4 (1) by inserting “(a)” before “Upon”; and

5 (2) adding at the end the following:

6 “(b) INTEREST.—

7 “(1) POST-JUDGMENT.—Upon entry of judg-
8 ment for the claimant in any proceeding to condemn
9 or forfeit property seized or arrested under any pro-
10 vision of Federal law (other than the Tariff Act of
11 1930 or the Internal Revenue Code of 1986) pro-
12 viding for the forfeiture of property other than as a
13 sentence imposed upon conviction of a criminal of-
14 fense, the United States shall be liable for post-judg-
15 ment interest as set forth in section 1961 of this
16 title.

17 “(2) PRE-JUDGMENT.—The United States shall
18 not be liable for pre-judgment interest in a pro-
19 ceeding under any provision of Federal law (other
20 than the Tariff Act of 1930 or the Internal Revenue
21 Code of 1986) providing for the forfeiture of prop-
22 erty other than as a sentence imposed upon convic-
23 tion of a criminal offense, except that in cases in-
24 volving currency, other negotiable instruments, or
25 the proceeds of an interlocutory sale, the United

1 States shall disgorge to the claimant any funds
 2 representing—

3 “(A) interest actually paid to the United
 4 States from the date of seizure or arrest of the
 5 property that resulted from the investment of
 6 the property in an interest-bearing account or
 7 instrument; and

8 “(B) for any period during which no inter-
 9 est is actually paid; an imputed amount of in-
 10 terest that such currency, instruments, or pro-
 11 ceeds would have earned at the rate described
 12 in section 1961.

13 “(3) LIMITATION ON OTHER PAYMENTS.—The
 14 United States shall not be required to disgorge the
 15 value of any intangible benefits in a proceeding
 16 under any provision of Federal law (than the Tariff
 17 Act of 1930 or the Internal Revenue Code of 1986)
 18 providing for the forfeiture of property other than as
 19 a sentence imposed upon conviction of a criminal of-
 20 fense nor make any other payments to the claimant
 21 not specifically authorized by this subsection.”.

22 **SEC. 5. APPLICABILITY.**

23 (a) IN GENERAL.—Unless otherwise specified in this
 24 Act, the amendments made by this Act apply with respect

1 to claims, suits, and actions filed on or after the date of
 2 the enactment of this Act.

3 ~~(b) EXCEPTIONS.—~~

4 ~~(1) The standard for the required burden of~~
 5 ~~proof set forth in section 981 of title 18, United~~
 6 ~~States Code, as amended by section 2, shall apply in~~
 7 ~~cases pending on the date of the enactment of this~~
 8 ~~Act.~~

9 ~~(2) The amendment made by section 4 shall~~
 10 ~~apply to any judgment entered after the date of the~~
 11 ~~enactment of this Act.~~

12 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

13 *(a) SHORT TITLE.—This Act may be cited as the*
 14 *“Civil Asset Forfeiture Reform Act of 2000”.*

15 *(b) TABLE OF CONTENTS.—The table of contents for*
 16 *this Act is as follows:*

- Sec. 1. Short title; table of contents.*
- Sec. 2. Creation of general rules relating to civil forfeiture proceedings.*
- Sec. 3. Compensation for damage to seized property.*
- Sec. 4. Attorney fees, costs, and interest.*
- Sec. 5. Seizure warrant requirement.*
- Sec. 6. Use of forfeited funds to pay restitution to crime victims.*
- Sec. 7. Civil forfeiture of real property.*
- Sec. 8. Stay of civil forfeiture case.*
- Sec. 9. Civil restraining orders.*
- Sec. 10. Cooperation among Federal prosecutors.*
- Sec. 11. Statute of limitations for civil forfeiture actions.*
- Sec. 12. Destruction or removal of property to prevent seizure.*
- Sec. 13. Fungible property in bank accounts.*
- Sec. 14. Fugitive disentitlement.*
- Sec. 15. Enforcement of foreign forfeiture judgment.*
- Sec. 16. Encouraging use of criminal forfeiture as an alternative to civil forfeiture.*
- Sec. 17. Access to records in bank secrecy jurisdictions*
- Sec. 18. Application to alien smuggling offenses.*
- Sec. 19. Enhanced visibility of the asset forfeiture program.*

Sec. 20. Proceeds.

Sec. 21. Effective date.

1 **SEC. 2. CREATION OF GENERAL RULES RELATING TO CIVIL**
 2 **FORFEITURE PROCEEDINGS.**

3 (a) *IN GENERAL.*—Chapter 46 of title 18, United
 4 States Code, is amended by inserting after section 982 the
 5 following:

6 **“§ 983. General rules for civil forfeiture proceedings**

7 “(a) *NOTICE; CLAIM; COMPLAINT.*—

8 “(1)(A)(i) *Except as provided in clauses (ii)*
 9 *through (v), in any nonjudicial civil forfeiture pro-*
 10 *ceeding under a civil forfeiture statute, with respect*
 11 *to which the Government is required to send written*
 12 *notice to interested parties, such notice shall be sent*
 13 *in a manner to achieve proper notice as soon as prac-*
 14 *ticable, and in no case more than 60 days after the*
 15 *date of the seizure.*

16 “(ii) *No notice is required if, before the 60-day*
 17 *period expires, the Government files a civil judicial*
 18 *forfeiture action against the property and provides*
 19 *notice of that action as required by law.*

20 “(iii) *If, before the 60-day period expires, the*
 21 *Government does not file a civil judicial forfeiture ac-*
 22 *tion, but does obtain a criminal indictment con-*
 23 *taining an allegation that the property is subject to*
 24 *forfeiture, the government shall either—*

1 “(I) send notice within the 60 days and
2 continue the nonjudicial civil forfeiture pro-
3 ceeding under this section; or

4 “(II) terminate the nonjudicial civil for-
5 feiture proceeding, and take the steps necessary
6 to preserve its right to maintain custody of the
7 property as provided in the applicable criminal
8 forfeiture statute.

9 “(iv) In a case in which the property is seized
10 by a State or local law enforcement agency and
11 turned over to a Federal law enforcement agency for
12 the purpose of forfeiture under Federal law, notice
13 shall be sent not more than 90 days after the date of
14 seizure by the State or local law enforcement agency.

15 “(v) If the identity or interest of a party is not
16 determined until after the seizure or turnover but is
17 determined before a declaration of forfeiture is en-
18 tered, notice shall be sent to such interested party not
19 later than 60 days after the determination by the
20 Government of the identity of the party or the party’s
21 interest.

22 “(B) A supervisory official in the headquarters
23 office of the seizing agency may extend the period for
24 sending notice under subparagraph (A) for a period
25 not to exceed 30 days (which period may not be fur-

1 *ther extended except by a court), if the official deter-*
2 *mines that the conditions in subparagraph (D) are*
3 *present.*

4 *“(C) Upon motion by the Government, a court*
5 *may extend the period for sending notice under sub-*
6 *paragraph (A) for a period not to exceed 60 days,*
7 *which period may be further extended by the court for*
8 *60-day periods, as necessary, if the court determines,*
9 *based on a written certification of a supervisory offi-*
10 *cial in the headquarters office of the seizing agency,*
11 *that the conditions in subparagraph (D) are present.*

12 *“(D) The period for sending notice under this*
13 *paragraph may be extended only if there is reason to*
14 *believe that notice may have an adverse result,*
15 *including—*

16 *“(i) endangering the life or physical safety*
17 *of an individual;*

18 *“(ii) flight from prosecution;*

19 *“(iii) destruction of or tampering with evi-*
20 *dence;*

21 *“(iv) intimidation of potential witnesses; or*

22 *“(v) otherwise seriously jeopardizing an in-*
23 *vestigation or unduly delaying a trial.*

24 *“(E) Each of the Federal seizing agencies con-*
25 *ducting nonjudicial forfeitures under this section shall*

1 *report periodically to the Committees on the Judici-*
2 *ary of the House of Representatives and the Senate*
3 *the number of occasions when an extension of time is*
4 *granted under subparagraph (B).*

5 “(F) *If the Government does not send notice of*
6 *a seizure of property in accordance with subpara-*
7 *graph (A) to the person from whom the property was*
8 *seized, and no extension of time is granted, the Gov-*
9 *ernment shall return the property to that person*
10 *without prejudice to the right of the Government to*
11 *commence a forfeiture proceeding at a later time. The*
12 *Government shall not be required to return contra-*
13 *band or other property that the person from whom the*
14 *property was seized may not legally possess.*

15 “(2)(A) *Any person claiming property seized in*
16 *a nonjudicial civil forfeiture proceeding under a civil*
17 *forfeiture statute may file a claim with the appro-*
18 *priate official after the seizure.*

19 “(B) *A claim under subparagraph (A) may be*
20 *filed not later than the deadline set forth in a per-*
21 *sonal notice letter (which deadline may be not earlier*
22 *than 35 days after the date the letter is mailed), ex-*
23 *cept that if that letter is not received, then a claim*
24 *may be filed not later than 30 days after the date of*
25 *final publication of notice of seizure.*

1 “(C) *A claim shall—*

2 “(i) *identify the specific property being*
3 *claimed;*

4 “(ii) *state the claimant’s interest in such*
5 *property (and provide customary documentary*
6 *evidence of such interest if available) and state*
7 *that the claim is not frivolous; and*

8 “(iii) *be made under oath, subject to pen-*
9 *alty of perjury.*

10 “(D) *A claim need not be made in any par-*
11 *ticular form. Each Federal agency conducting non-*
12 *judicial forfeitures under this section shall make*
13 *claim forms generally available on request, which*
14 *forms shall be written in easily understandable lan-*
15 *guage.*

16 “(E) *Any person may make a claim under sub-*
17 *paragraph (A) without posting bond with respect to*
18 *the property which is the subject of the claim.*

19 “(3)(A) *Not later than 90 days after a claim has*
20 *been filed, the Government shall file a complaint for*
21 *forfeiture in the manner set forth in the Supplemental*
22 *Rules for Certain Admiralty and Maritime Claims or*
23 *return the property pending the filing of a complaint,*
24 *except that a court in the district in which the com-*
25 *plaint will be filed may extend the period for filing*

1 *a complaint for good cause shown or upon agreement*
2 *of the parties.*

3 “(B) *If the Government does not—*

4 “(i) *file a complaint for forfeiture or return*
5 *the property, in accordance with subparagraph*
6 *(A); or*

7 “(ii) *before the time for filing a complaint*
8 *has expired—*

9 “(I) *obtain a criminal indictment con-*
10 *taining an allegation that the property is*
11 *subject to forfeiture; and*

12 “(II) *take the steps necessary to pre-*
13 *serve its right to maintain custody of the*
14 *property as provided in the applicable*
15 *criminal forfeiture statute,*

16 *the Government shall promptly release the property*
17 *pursuant to regulations promulgated by the Attorney*
18 *General, and may not take any further action to ef-*
19 *fect the civil forfeiture of such property in connection*
20 *with the underlying offense.*

21 “(C) *In lieu of, or in addition to, filing a civil*
22 *forfeiture complaint, the Government may include a*
23 *forfeiture allegation in a criminal indictment. If*
24 *criminal forfeiture is the only forfeiture proceeding*
25 *commenced by the Government, the Government’s*

1 *right to continued possession of the property shall be*
2 *governed by the applicable criminal forfeiture statute.*

3 “(D) *No complaint may be dismissed on the*
4 *ground that the Government did not have adequate*
5 *evidence at the time the complaint was filed to estab-*
6 *lish the forfeitability of the property.*

7 “(4)(A) *In any case in which the Government*
8 *files in the appropriate United States district court*
9 *a complaint for forfeiture of property, any person*
10 *claiming an interest in the seized property may file*
11 *a claim asserting such person’s interest in the prop-*
12 *erty in the manner set forth in the Supplemental*
13 *Rules for Certain Admiralty and Maritime Claims,*
14 *except that such claim may be filed not later than 30*
15 *days after the date of service of the Government’s*
16 *complaint or, as applicable, not later than 30 days*
17 *after the date of final publication of notice of the fil-*
18 *ing of the complaint.*

19 “(B) *A person asserting an interest in seized*
20 *property, in accordance with subparagraph (A), shall*
21 *file an answer to the Government’s complaint for for-*
22 *feiture not later than 20 days after the date of the fil-*
23 *ing of the claim.*

24 “(b) *REPRESENTATION.—*

1 “(1)(A) *If a person with standing to contest the*
2 *forfeiture of property in a judicial civil forfeiture pro-*
3 *ceeding under a civil forfeiture statute is financially*
4 *unable to obtain representation by counsel, and the*
5 *person is represented by counsel appointed under sec-*
6 *tion 3006A of this title in connection with a related*
7 *criminal case, the court may authorize counsel to rep-*
8 *resent that person with respect to the claim.*

9 “(B) *In determining whether to authorize coun-*
10 *sel to represent a person under subparagraph (A), the*
11 *court shall take into account such factors as—*

12 “(i) *the person’s standing to contest the for-*
13 *feiture; and*

14 “(ii) *whether the claim appears to be made*
15 *in good faith.*

16 “(2)(A) *If a person with standing to contest the*
17 *forfeiture of property in a judicial civil forfeiture pro-*
18 *ceeding under a civil forfeiture statute is financially*
19 *unable to obtain representation by counsel, and the*
20 *property subject to forfeiture is real property that is*
21 *being used by the person as a primary residence, the*
22 *court, at the request of the person, shall insure that*
23 *the person is represented by an attorney for the Legal*
24 *Services Corporation with respect to the claim.*

1 “(B)(i) *At appropriate times during a represen-*
2 *tation under subparagraph (A), the Legal Services*
3 *Corporation shall submit a statement of reasonable*
4 *attorney fees and costs to the court.*

5 “(ii) *The court shall enter a judgment in favor*
6 *of the Legal Services Corporation for reasonable attor-*
7 *ney fees and costs submitted pursuant to clause (i)*
8 *and treat such judgment as payable under section*
9 *2465 of title 28, United States Code, regardless of the*
10 *outcome of the case.*

11 “(3) *The court shall set the compensation for*
12 *representation under this subsection, which shall be*
13 *equivalent to that provided for court-appointed rep-*
14 *resentation under section 3006A of this title.*

15 “(c) *BURDEN OF PROOF.—In a suit or action brought*
16 *under any civil forfeiture statute for the civil forfeiture of*
17 *any property—*

18 “(1) *the burden of proof is on the Government to*
19 *establish, by a preponderance of the evidence, that the*
20 *property is subject to forfeiture;*

21 “(2) *the Government may use evidence gathered*
22 *after the filing of a complaint for forfeiture to estab-*
23 *lish, by a preponderance of the evidence, that prop-*
24 *erty is subject to forfeiture; and*

1 “(3) if the Government’s theory of forfeiture is
2 that the property was used to commit or facilitate the
3 commission of a criminal offense, or was involved in
4 the commission of a criminal offense, the Government
5 shall establish that there was a substantial connection
6 between the property and the offense.

7 “(d) INNOCENT OWNER DEFENSE.—

8 “(1) An innocent owner’s interest in property
9 shall not be forfeited under any civil forfeiture statute. The claimant shall have the burden of proving
10 that the claimant is an innocent owner by a preponderance of the evidence.

13 “(2)(A) With respect to a property interest in existence at the time the illegal conduct giving rise to
14 forfeiture took place, the term ‘innocent owner’ means
15 an owner who—

17 “(i) did not know of the conduct giving rise
18 to forfeiture; or

19 “(ii) upon learning of the conduct giving
20 rise to the forfeiture, did all that reasonably
21 could be expected under the circumstances to terminate such use of the property.

23 “(B)(i) For the purposes of this paragraph, ways
24 in which a person may show that such person did all
25 that reasonably could be expected may include dem-

1 onstrating that such person, to the extent permitted
2 by law—

3 “(I) gave timely notice to an appropriate
4 law enforcement agency of information that led
5 the person to know the conduct giving rise to a
6 forfeiture would occur or has occurred; and

7 “(II) in a timely fashion revoked or made
8 a good faith attempt to revoke permission for
9 those engaging in such conduct to use the prop-
10 erty or took reasonable actions in consultation
11 with a law enforcement agency to discourage or
12 prevent the illegal use of the property.

13 “(ii) A person is not required by this subpara-
14 graph to take steps that the person reasonably believes
15 would be likely to subject any person (other than the
16 person whose conduct gave rise to the forfeiture) to
17 physical danger.

18 “(3)(A) With respect to a property interest ac-
19 quired after the conduct giving rise to the forfeiture
20 has taken place, the term ‘innocent owner’ means a
21 person who, at the time that person acquired the in-
22 terest in the property—

23 “(i) was a bona fide purchaser or seller for
24 value (including a purchaser or seller of goods or
25 services for value); and

1 “(ii) did not know and was reasonably
2 without cause to believe that the property was
3 subject to forfeiture.

4 “(B) An otherwise valid claim under subpara-
5 graph (A) shall not be denied on the ground that the
6 claimant gave nothing of value in exchange for the
7 property if—

8 “(i) the property is the primary residence of
9 the claimant;

10 “(ii) depriving the claimant of the property
11 would deprive the claimant of the means to
12 maintain reasonable shelter in the community
13 for the claimant and all dependents residing
14 with the claimant;

15 “(iii) the property is not, and is not trace-
16 able to, the proceeds of any criminal offense; and

17 “(iv) the claimant acquired his or her inter-
18 est in the property through marriage, divorce, or
19 legal separation, or the claimant was the spouse
20 or legal dependent of a person whose death re-
21 sulted in the transfer of the property to the
22 claimant through inheritance or probate;

23 except that the court shall limit the value of any real
24 property interest for which innocent ownership is rec-
25 ognized under this subparagraph to the value nec-

1 *essary to maintain reasonable shelter in the commu-*
2 *nity for such claimant and all dependents residing*
3 *with the claimant.*

4 *“(4) Notwithstanding any provision of this sub-*
5 *section, no person may assert an ownership interest*
6 *under this subsection in contraband or other property*
7 *that it is illegal to possess.*

8 *“(5) If the court determines, in accordance with*
9 *this section, that an innocent owner has a partial in-*
10 *terest in property otherwise subject to forfeiture, or a*
11 *joint tenancy or tenancy by the entirety in such prop-*
12 *erty, the court may enter an appropriate order—*

13 *“(A) severing the property;*

14 *“(B) transferring the property to the Gov-*
15 *ernment with a provision that the Government*
16 *compensate the innocent owner to the extent of*
17 *his or her ownership interest once a final order*
18 *of forfeiture has been entered and the property*
19 *has been reduced to liquid assets; or*

20 *“(C) permitting the innocent owner to re-*
21 *tain the property subject to a lien in favor of the*
22 *Government to the extent of the forfeitable inter-*
23 *est in the property.*

24 *“(6) In this subsection, the term ‘owner’—*

1 “(A) means a person with an ownership in-
 2 terest in the specific property sought to be for-
 3 feited, including a leasehold, lien, mortgage, re-
 4 corded security interest, or valid assignment of
 5 an ownership interest; and

6 “(B) does not include—

7 “(i) a person with only a general unse-
 8 cured interest in, or claim against, the
 9 property or estate of another;

10 “(ii) a bailee unless the bailor is iden-
 11 tified and the bailee shows a colorable legiti-
 12 mate interest in the property seized; or

13 “(iii) a nominee who exercises no do-
 14 minion or control over the property.

15 “(e) *MOTION TO SET ASIDE FORFEITURE.*—

16 “(1) Any person entitled to written notice in any
 17 nonjudicial civil forfeiture proceeding under a civil
 18 forfeiture statute who does not receive such notice may
 19 file a motion to set aside a declaration of forfeiture
 20 with respect to that person’s interest in the property,
 21 which motion shall be granted if—

22 “(A) the Government knew, or reasonably
 23 should have known, of the moving party’s inter-
 24 est and failed to take reasonable steps to provide
 25 such party with notice; and

1 “(B) the moving party did not know or
2 have reason to know of the seizure within suffi-
3 cient time to file a timely claim.

4 “(2)(A) Notwithstanding the expiration of any
5 applicable statute of limitations, if the court grants a
6 motion under paragraph (1), the court shall set aside
7 the declaration of forfeiture as to the interest of the
8 moving party without prejudice to the right of the
9 Government to commence a subsequent forfeiture pro-
10 ceeding as to the interest of the moving party.

11 “(B) Any proceeding described in subparagraph
12 (A) shall be commenced—

13 “(i) if nonjudicial, within 60 days of the
14 entry of the order granting the motion; or

15 “(ii) if judicial, within 6 months of the
16 entry of the order granting the motion.

17 “(3) A motion under paragraph (1) may be filed
18 not later than 5 years after the date of final publica-
19 tion of notice of seizure of the property.

20 “(4) If, at the time a motion made under para-
21 graph (1) is granted, the forfeited property has been
22 disposed of by the Government in accordance with
23 law, the Government may institute proceedings
24 against a substitute sum of money equal to the value

1 of the moving party’s interest in the property at the
2 time the property was disposed of.

3 “(5) A motion filed under this subsection shall be
4 the exclusive remedy for seeking to set aside a declara-
5 tion of forfeiture under a civil forfeiture statute.

6 “(f) *RELEASE OF SEIZED PROPERTY.*—

7 “(1) A claimant under subsection (a) is entitled
8 to immediate release of seized property if—

9 “(A) the claimant has a possessory interest
10 in the property;

11 “(B) the claimant has sufficient ties to the
12 community to provide assurance that the prop-
13 erty will be available at the time of the trial;

14 “(C) the continued possession by the Gov-
15 ernment pending the final disposition of for-
16 feiture proceedings will cause substantial hard-
17 ship to the claimant, such as preventing the
18 functioning of a business, preventing an indi-
19 vidual from working, or leaving an individual
20 homeless;

21 “(D) the claimant’s likely hardship from the
22 continued possession by the Government of the
23 seized property outweighs the risk that the prop-
24 erty will be destroyed, damaged, lost, concealed,

1 *or transferred if it is returned to the claimant*
2 *during the pendency of the proceeding; and*

3 “(E) none of the conditions set forth in
4 paragraph (8) applies.

5 “(2) A claimant seeking release of property
6 under this subsection must request possession of the
7 property from the appropriate official, and the re-
8 quest must set forth the basis on which the require-
9 ments of paragraph (1) are met.

10 “(3)(A) If not later than 15 days after the date
11 of a request under paragraph (2) the property has not
12 been released, the claimant may file a petition in the
13 district court in which the complaint has been filed
14 or, if no complaint has been filed, in the district court
15 in which the seizure warrant was issued or in the dis-
16 trict court for the district in which the property was
17 seized.

18 “(B) The petition described in subparagraph (A)
19 shall set forth—

20 “(i) the basis on which the requirements of
21 paragraph (1) are met; and

22 “(ii) the steps the claimant has taken to se-
23 cure release of the property from the appropriate
24 official.

1 “(4) If the Government establishes that the
2 claimant’s claim is frivolous, the court shall deny the
3 petition. In responding to a petition under this sub-
4 section on other grounds, the Government may in ap-
5 propriate cases submit evidence *ex parte* in order to
6 avoid disclosing any matter that may adversely affect
7 an ongoing criminal investigation or pending crimi-
8 nal trial.

9 “(5) The court shall render a decision on a peti-
10 tion filed under paragraph (3) not later than 30 days
11 after the date of the filing, unless such 30-day limita-
12 tion is extended by consent of the parties or by the
13 court for good cause shown.

14 “(6) If—

15 “(A) a petition is filed under paragraph
16 (3); and

17 “(B) the claimant demonstrates that the re-
18 quirements of paragraph (1) have been met;

19 the district court shall order that the property be re-
20 turned to the claimant, pending completion of pro-
21 ceedings by the Government to obtain forfeiture of the
22 property.

23 “(7) If the court grants a petition under para-
24 graph (3)—

1 “(A) the court may enter any order nec-
2 essary to ensure that the value of the property is
3 maintained while the forfeiture action is pend-
4 ing, including—

5 “(i) permitting the inspection,
6 photographing, and inventory of the prop-
7 erty;

8 “(ii) fixing a bond in accordance with
9 rule E(5) of the Supplemental Rules for
10 Certain Admiralty and Maritime Claims;
11 and

12 “(iii) requiring the claimant to obtain
13 or maintain insurance on the subject prop-
14 erty; and

15 “(B) the Government may place a lien
16 against the property or file a *lis pendens* to en-
17 sure that the property is not transferred to an-
18 other person.

19 “(8) This subsection shall not apply if the seized
20 property—

21 “(A) is contraband, currency, or other mon-
22 etary instrument, or electronic funds unless such
23 currency or other monetary instrument or elec-
24 tronic funds constitutes the assets of a legitimate
25 business which has been seized;

1 “(B) is to be used as evidence of a violation
2 of the law;

3 “(C) by reason of design or other char-
4 acteristic, is particularly suited for use in illegal
5 activities; or

6 “(D) is likely to be used to commit addi-
7 tional criminal acts if returned to the claimant.

8 “(g) *PROPORTIONALITY*.—

9 “(1) The claimant under subsection (a)(4) may
10 petition the court to determine whether the forfeiture
11 was constitutionally excessive.

12 “(2) In making this determination, the court
13 shall compare the forfeiture to the gravity of the of-
14 fense giving rise to the forfeiture.

15 “(3) The claimant shall have the burden of estab-
16 lishing that the forfeiture is grossly disproportional
17 by a preponderance of the evidence at a hearing con-
18 ducted by the court without a jury.

19 “(4) If the court finds that the forfeiture is gross-
20 ly disproportional to the offense it shall reduce or
21 eliminate the forfeiture as necessary to avoid a viola-
22 tion of the Excessive Fines Clause of the Eighth
23 Amendment of the Constitution.

24 “(h) *CIVIL FINE*.—

1 “(1) *In any civil forfeiture proceeding under a*
2 *civil forfeiture statute in which the Government pre-*
3 *vails, if the court finds that the claimant’s assertion*
4 *of an interest in the property was frivolous, the court*
5 *may impose a civil fine on the claimant of an*
6 *amount equal to 10 percent of the value of the for-*
7 *feited property, but in no event shall the fine be less*
8 *than \$250 or greater than \$5,000.*

9 “(2) *Any civil fine imposed under this subsection*
10 *shall not preclude the court from imposing sanctions*
11 *under rule 11 of the Federal Rules of Civil Procedure.*

12 “(3) *In addition to the limitations of section*
13 *1915 of title 28, United States Code, in no event shall*
14 *a prisoner file a claim under a civil forfeiture statute*
15 *or appeal a judgment in a civil action or proceeding*
16 *based on a civil forfeiture statute if the prisoner has,*
17 *on 3 or more prior occasions, while incarcerated or*
18 *detained in any facility, brought an action or appeal*
19 *in a court of the United States that was dismissed on*
20 *the grounds that it is frivolous or malicious, unless*
21 *the prisoner shows extraordinary and exceptional cir-*
22 *cumstances.*

23 “(i) *CIVIL FORFEITURE STATUTE DEFINED.—In this*
24 *section, the term ‘civil forfeiture statute’—*

1 “(1) means any provision of Federal law pro-
 2 viding for the forfeiture of property other than as a
 3 sentence imposed upon conviction of a criminal of-
 4 fense; and

5 “(2) does not include—

6 “(A) the Tariff Act of 1930 or any other
 7 provision of law codified in title 19;

8 “(B) the Internal Revenue Code of 1986;

9 “(C) the Federal Food, Drug, and Cosmetic
 10 Act (21 U.S.C. 301 et seq.);

11 “(D) the Trading with the Enemy Act (50
 12 U.S.C. App. 1 et seq.); or

13 “(E) section 1 of title VI of the Act of June
 14 15, 1917 (40 Stat. 233; 22 U.S.C. 401).”.

15 (b) *TECHNICAL AND CONFORMING AMENDMENT.*—The
 16 analysis for chapter 46 of title 18, United States Code, is
 17 amended by inserting after the item relating to section 982
 18 the following:

 “983. General rules for civil forfeiture proceedings.”.

19 (c) *STRIKING SUPERSEDED PROVISIONS.*—

20 (1) *CIVIL FORFEITURE.*—Section 981(a) of title
 21 18, United States Code, is amended—

22 (A) in paragraph (1), by striking “Except
 23 as provided in paragraph (2), the” and inserting
 24 “The”; and

25 (B) by striking paragraph (2).

1 (2) *DRUG FORFEITURES*.—Paragraphs (4), (6)
 2 and (7) of section 511(a) of the Controlled Substances
 3 Act (21 U.S.C. 881(a) (4), (6) and (7)) are each
 4 amended by striking “, except that” and all that fol-
 5 lows before the period at the end.

6 (3) *AUTOMOBILES*.—Section 518 of the Con-
 7 trolled Substances Act (21 U.S.C. 888) is repealed.

8 (4) *FORFEITURES IN CONNECTION WITH SEXUAL*
 9 *EXPLOITATION OF CHILDREN*.—Paragraphs (2) and
 10 (3) of section 2254(a) of title 18, United States Code,
 11 are each amended by striking “, except that” and all
 12 that follows before the period at the end.

13 (d) *LEGAL SERVICES CORPORATION REPRESENTA-*
 14 *TION*.—Section 1007(a) of the Legal Services Corporation
 15 Act (42 U.S.C. 2996f(a)) is amended—

16 (1) in paragraph (9), by striking “and” after the
 17 semicolon;

18 (2) In paragraph (10), by striking the period
 19 and inserting “; and”; and

20 (3) by adding at the end the following:

21 “(11) ensure that an indigent individual whose
 22 primary residence is subject to civil forfeiture is rep-
 23 resented by an attorney for the Corporation in such
 24 civil action.”

1 **SEC. 3. COMPENSATION FOR DAMAGE TO SEIZED PROP-**
2 **ERTY.**

3 (a) *TORT CLAIMS ACT.*—Section 2680(c) of title 28,
4 *United States Code*, is amended—

5 (1) by striking “any goods or merchandise” and
6 inserting “any goods, merchandise, or other prop-
7 erty”;

8 (2) by striking “law-enforcement” and inserting
9 “law enforcement”; and

10 (3) by inserting before the period at the end the
11 following: “, except that the provisions of this chapter
12 and section 1346(b) of this title apply to any claim
13 based on injury or loss of goods, merchandise, or other
14 property, while in the possession of any officer of cus-
15 toms or excise or any other law enforcement officer,
16 if—

17 “(1) the property was seized for the purpose of
18 forfeiture under any provision of Federal law pro-
19 viding for the forfeiture of property other than as a
20 sentence imposed upon conviction of a criminal of-
21 fense;

22 “(2) the interest of the claimant was not for-
23 feited;

24 “(3) the interest of the claimant was not remit-
25 ted or mitigated (if the property was subject to for-
26 feiture); and

1 “(4) the claimant was not convicted of a crime
 2 for which the interest of the claimant in the property
 3 was subject to forfeiture under a Federal criminal for-
 4 feiture law.”.

5 (b) *DEPARTMENT OF JUSTICE.*—

6 (1) *IN GENERAL.*—With respect to a claim that
 7 cannot be settled under chapter 171 of title 28, United
 8 States Code, the Attorney General may settle, for not
 9 more than \$50,000 in any case, a claim for damage
 10 to, or loss of, privately owned property caused by an
 11 investigative or law enforcement officer (as defined in
 12 section 2680(h) of title 28, United States Code) who
 13 is employed by the Department of Justice acting
 14 within the scope of his or her employment.

15 (2) *LIMITATIONS.*—The Attorney General may
 16 not pay a claim under paragraph (1) that—

17 (A) is presented to the Attorney General
 18 more than 1 year after it accrues; or

19 (B) is presented by an officer or employee
 20 of the Federal Government and arose within the
 21 scope of employment.

22 **SEC. 4. ATTORNEY FEES, COSTS, AND INTEREST.**

23 (a) *IN GENERAL.*—Section 2465 of title 28, United
 24 States Code, is amended to read as follows:

1 **“§ 2465. Return of property to claimant; liability for**
2 **wrongful seizure; attorney fees, costs, and**
3 **interest**

4 “(a) *Upon the entry of a judgment for the claimant*
5 *in any proceeding to condemn or forfeit property seized or*
6 *arrested under any provision of Federal law—*

7 “(1) *such property shall be returned forthwith to*
8 *the claimant or his agent; and*

9 “(2) *if it appears that there was reasonable*
10 *cause for the seizure or arrest, the court shall cause*
11 *a proper certificate thereof to be entered and, in such*
12 *case, neither the person who made the seizure or ar-*
13 *rest nor the prosecutor shall be liable to suit or judg-*
14 *ment on account of such suit or prosecution, nor shall*
15 *the claimant be entitled to costs, except as provided*
16 *in subsection (b).*

17 “(b)(1) *Except as provided in paragraph (2), in any*
18 *civil proceeding to forfeit property under any provision of*
19 *Federal law in which the claimant substantially prevails,*
20 *the United States shall be liable for—*

21 “(A) *reasonable attorney fees and other litigation*
22 *costs reasonably incurred by the claimant;*

23 “(B) *post-judgment interest, as set forth in sec-*
24 *tion 1961 of this title; and*

1 “(C) in cases involving currency, other nego-
2 tiable instruments, or the proceeds of an interlocutory
3 sale—

4 “(i) interest actually paid to the United
5 States from the date of seizure or arrest of the
6 property that resulted from the investment of the
7 property in an interest-bearing account or in-
8 strument; and

9 “(ii) an imputed amount of interest that
10 such currency, instruments, or proceeds would
11 have earned at the rate applicable to the 30-day
12 Treasury Bill, for any period during which no
13 interest was paid (not including any period
14 when the property reasonably was in use as evi-
15 dence in an official proceeding or in conducting
16 scientific tests for the purpose of collecting evi-
17 dence), commencing 15 days after the property
18 was seized by a Federal law enforcement agency,
19 or was turned over to a Federal law enforcement
20 agency by a State or local law enforcement agen-
21 cy.

22 “(2)(A) The United States shall not be required
23 to disgorge the value of any intangible benefits nor
24 make any other payments to the claimant not specifi-
25 cally authorized by this subsection.

1 “(B) *The provisions of paragraph (1) shall not*
 2 *apply if the claimant is convicted of a crime for*
 3 *which the interest of the claimant in the property was*
 4 *subject to forfeiture under a Federal criminal for-*
 5 *feiture law.*

6 “(C) *If there are multiple claims to the same*
 7 *property, the United States shall not be liable for*
 8 *costs and attorneys fees associated with any such*
 9 *claim if the United States—*

10 “(i) *promptly recognizes such claim;*

11 “(ii) *promptly returns the interest of the*
 12 *claimant in the property to the claimant, if the*
 13 *property can be divided without difficulty and*
 14 *there are no competing claims to that portion of*
 15 *the property;*

16 “(iii) *does not cause the claimant to incur*
 17 *additional, reasonable costs or fees; and*

18 “(iv) *prevails in obtaining forfeiture with*
 19 *respect to one or more of the other claims.*

20 “(D) *If the court enters judgment in part for the*
 21 *claimant and in part for the Government, the court*
 22 *shall reduce the award of costs and attorney fees ac-*
 23 *cordingly.”.*

24 (b) *TECHNICAL AND CONFORMING AMENDMENT.—The*
 25 *analysis for chapter 163 of title 28, United States Code,*

1 *is amended by striking the item relating to section 2465*
 2 *and inserting following:*

“2465. Return of property to claimant; liability for wrongful seizure; attorney fees, costs, and interest.”.

3 ***SEC. 5. SEIZURE WARRANT REQUIREMENT.***

4 *(a) IN GENERAL.—Section 981(b) of title 18, United*
 5 *States Code, is amended to read as follows:*

6 *“(b)(1) Except as provided in section 985, any prop-*
 7 *erty subject to forfeiture to the United States under sub-*
 8 *section (a) may be seized by the Attorney General and, in*
 9 *the case of property involved in a violation investigated by*
 10 *the Secretary of the Treasury or the United States Postal*
 11 *Service, the property may also be seized by the Secretary*
 12 *of the Treasury or the Postal Service, respectively.*

13 *“(2) Seizures pursuant to this section shall be made*
 14 *pursuant to a warrant obtained in the same manner as*
 15 *provided for a search warrant under the Federal Rules of*
 16 *Criminal Procedure, except that a seizure may be made*
 17 *without a warrant if—*

18 *“(A) a complaint for forfeiture has been filed in*
 19 *the United States district court and the court issued*
 20 *an arrest warrant in rem pursuant to the Supple-*
 21 *mental Rules for Certain Admiralty and Maritime*
 22 *Claims;*

23 *“(B) there is probable cause to believe that the*
 24 *property is subject to forfeiture and—*

1 “(i) the seizure is made pursuant to a law-
2 ful arrest or search; or

3 “(ii) another exception to the Fourth
4 Amendment warrant requirement would apply;
5 or

6 “(C) the property was lawfully seized by a State
7 or local law enforcement agency and transferred to a
8 Federal agency.

9 “(3) Notwithstanding the provisions of rule 41(a) of
10 the Federal Rules of Criminal Procedure, a seizure warrant
11 may be issued pursuant to this subsection by a judicial offi-
12 cer in any district in which a forfeiture action against the
13 property may be filed under section 1355(b) of title 28, and
14 may be executed in any district in which the property is
15 found, or transmitted to the central authority of any foreign
16 state for service in accordance with any treaty or other
17 international agreement. Any motion for the return of prop-
18 erty seized under this section shall be filed in the district
19 court in which the seizure warrant was issued or in the
20 district court for the district in which the property was
21 seized.

22 “(4)(A) If any person is arrested or charged in a for-
23 eign country in connection with an offense that would give
24 rise to the forfeiture of property in the United States under
25 this section or under the Controlled Substances Act, the At-

1 *torney General may apply to any Federal judge or mag-*
 2 *istrate judge in the district in which the property is located*
 3 *for an ex parte order restraining the property subject to*
 4 *forfeiture for not more than 30 days, except that the time*
 5 *may be extended for good cause shown at a hearing con-*
 6 *ducted in the manner provided in rule 43(e) of the Federal*
 7 *Rules of Civil Procedure.*

8 “(B) *The application for the restraining order shall*
 9 *set forth the nature and circumstances of the foreign charges*
 10 *and the basis for belief that the person arrested or charged*
 11 *has property in the United States that would be subject to*
 12 *forfeiture, and shall contain a statement that the restrain-*
 13 *ing order is needed to preserve the availability of property*
 14 *for such time as is necessary to receive evidence from the*
 15 *foreign country or elsewhere in support of probable cause*
 16 *for the seizure of the property under this subsection.”.*

17 (b) *DRUG FORFEITURES.*—Section 511(b) of the Con-
 18 *trolled Substances Act (21 U.S.C. 881(b)) is amended to*
 19 *read as follows:*

20 “(b) *SEIZURE PROCEDURES.*—Any property subject to
 21 *forfeiture to the United States under this section may be*
 22 *seized by the Attorney General in the manner set forth in*
 23 *section 981(b) of title 18, United States Code.”.*

1 **SEC. 6. USE OF FORFEITED FUNDS TO PAY RESTITUTION**
 2 **TO CRIME VICTIMS.**

3 *Section 981(e) of title 18, United States Code, is*
 4 *amended by striking paragraph (6) and inserting the fol-*
 5 *lowing:*

6 *“(6) as restoration to any victim of the offense*
 7 *giving rise to the forfeiture, including, in the case of*
 8 *a money laundering offense, any offense constituting*
 9 *the underlying specified unlawful activity; or”.*

10 **SEC. 7. CIVIL FORFEITURE OF REAL PROPERTY.**

11 *(a) IN GENERAL.—Chapter 46 of title 18, United*
 12 *States Code, is amended by inserting after section 984 the*
 13 *following:*

14 **“§ 985. Civil forfeiture of real property**

15 *“(a) Notwithstanding any other provision of law, all*
 16 *civil forfeitures of real property and interests in real prop-*
 17 *erty shall proceed as judicial forfeitures.*

18 *“(b)(1) Except as provided in this section—*

19 *“(A) real property that is the subject of a*
 20 *civil forfeiture action shall not be seized before*
 21 *entry of an order of forfeiture; and*

22 *“(B) the owners or occupants of the real*
 23 *property shall not be evicted from, or otherwise*
 24 *deprived of the use and enjoyment of, real prop-*
 25 *erty that is the subject of a pending forfeiture ac-*
 26 *tion.*

1 “(2) *The filing of a lis pendens and the execution*
2 *of a writ of entry for the purpose of conducting an*
3 *inspection and inventory of the property shall not be*
4 *considered a seizure under this subsection.*

5 “(c)(1) *The Government shall initiate a civil forfeiture*
6 *action against real property by—*

7 “(A) *filing a complaint for forfeiture;*

8 “(B) *posting a notice of the complaint on the*
9 *property; and*

10 “(C) *serving notice on the property owner, along*
11 *with a copy of the complaint.*

12 “(2) *If the property owner cannot be served with the*
13 *notice under paragraph (1) because the owner—*

14 “(A) *is a fugitive;*

15 “(B) *resides outside the United States and efforts*
16 *at service pursuant to rule 4 of the Federal Rules of*
17 *Civil Procedure are unavailing; or*

18 “(C) *cannot be located despite the exercise of due*
19 *diligence,*

20 *constructive service may be made in accordance with the*
21 *laws of the State in which the property is located.*

22 “(3) *If real property has been posted in accordance*
23 *with this subsection, it shall not be necessary for the court*
24 *to issue an arrest warrant in rem, or to take any other*
25 *action to establish in rem jurisdiction over the property.*

1 “(d)(1) Real property may be seized prior to the entry
2 of an order of forfeiture if—

3 “(A) the Government notifies the court that it
4 intends to seize the property before trial; and

5 “(B) the court—

6 “(i) issues a notice of application for war-
7 rant, causes the notice to be served on the prop-
8 erty owner and posted on the property, and con-
9 ducts a hearing in which the property owner has
10 a meaningful opportunity to be heard; or

11 “(ii) makes an *ex parte* determination that
12 there is probable cause for the forfeiture and that
13 there are exigent circumstances that permit the
14 Government to seize the property without prior
15 notice and an opportunity for the property
16 owner to be heard.

17 “(2) For purposes of paragraph (1)(B)(ii), to establish
18 exigent circumstances, the Government shall show that less
19 restrictive measures such as a *lis pendens*, restraining
20 order, or bond would not suffice to protect the Government’s
21 interests in preventing the sale, destruction, or continued
22 unlawful use of the real property.

23 “(e) If the court authorizes a seizure of real property
24 under subsection (d)(1)(B)(ii), it shall conduct a prompt

1 *post-seizure hearing during which the property owner shall*
 2 *have an opportunity to contest the basis for the seizure.*

3 “(f) *This section—*

4 “(1) *applies only to civil forfeitures of real prop-*
 5 *erty and interests in real property;*

6 “(2) *does not apply to forfeitures of the proceeds*
 7 *of the sale of such property or interests, or of money*
 8 *or other assets intended to be used to acquire such*
 9 *property or interests; and*

10 “(3) *shall not affect the authority of the court to*
 11 *enter a restraining order relating to real property.”.*

12 (b) *TECHNICAL AND CONFORMING AMENDMENT.—The*
 13 *analysis for chapter 46 of title 18, United States Code, is*
 14 *amended by inserting after the item relating to section 984*
 15 *the following:*

“985. *Civil forfeiture of real property.*”.

16 **SEC. 8. STAY OF CIVIL FORFEITURE CASE.**

17 (a) *IN GENERAL.—Section 981(g) of title 18, United*
 18 *States Code, is amended to read as follows:*

19 “(g)(1) *Upon the motion of the United States, the court*
 20 *shall stay the civil forfeiture proceeding if the court deter-*
 21 *mines that civil discovery will adversely affect the ability*
 22 *of the Government to conduct a related criminal investiga-*
 23 *tion or the prosecution of a related criminal case.*

1 “(2) Upon the motion of a claimant, the court shall
2 stay the civil forfeiture proceeding with respect to that
3 claimant if the court determines that—

4 “(A) the claimant is the subject of a related
5 criminal investigation or case;

6 “(B) the claimant has standing to assert a claim
7 in the civil forfeiture proceeding; and

8 “(C) continuation of the forfeiture proceeding
9 will burden the right of the claimant against self-in-
10 crimination in the related investigation or case.

11 “(3) With respect to the impact of civil discovery de-
12 scribed in paragraphs (1) and (2), the court may determine
13 that a stay is unnecessary if a protective order limiting
14 discovery would protect the interest of 1 party without un-
15 fairly limiting the ability of the opposing party to pursue
16 the civil case. In no case, however, shall the court impose
17 a protective order as an alternative to a stay if the effect
18 of such protective order would be to allow 1 party to pursue
19 discovery while the other party is substantially unable to
20 do so.

21 “(4) In this subsection, the terms ‘related criminal
22 case’ and ‘related criminal investigation’ mean an actual
23 prosecution or investigation in progress at the time at
24 which the request for the stay, or any subsequent motion
25 to lift the stay is made. In determining whether a criminal

1 case or investigation is ‘related’ to a civil forfeiture pro-
2 ceeding, the court shall consider the degree of similarity be-
3 tween the parties, witnesses, facts, and circumstances in-
4 volved in the 2 proceedings, without requiring an identity
5 with respect to any 1 or more factors.

6 “(5) In requesting a stay under paragraph (1), the
7 Government may, in appropriate cases, submit evidence *ex*
8 *parte* in order to avoid disclosing any matter that may ad-
9 versely affect an ongoing criminal investigation or pending
10 criminal trial.

11 “(6) Whenever a civil forfeiture proceeding is stayed
12 pursuant to this subsection, the court shall enter any order
13 necessary to preserve the value of the property or to protect
14 the rights of lienholders or other persons with an interest
15 in the property while the stay is in effect.

16 “(7) A determination by the court that the claimant
17 has standing to request a stay pursuant to paragraph (2)
18 shall apply only to this subsection and shall not preclude
19 the Government from objecting to the standing of the claim-
20 ant by dispositive motion or at the time of trial.”.

21 (b) *DRUG FORFEITURES*.—Section 511(i) of the Con-
22 trolled Substances Act (21 U.S.C. 881(i)) is amended to
23 read as follows:

1 “(i) *The provisions of section 981(g) of title 18, United*
 2 *States Code, regarding the stay of a civil forfeiture pro-*
 3 *ceeding shall apply to forfeitures under this section.*”.

4 **SEC. 9. CIVIL RESTRAINING ORDERS.**

5 *Section 983 of title 18, United States Code, as added*
 6 *by this Act, is amended by adding at the end the following:*

7 “(j) *RESTRAINING ORDERS; PROTECTIVE ORDERS.—*

8 “(1) *Upon application of the United States, the*
 9 *court may enter a restraining order or injunction, re-*
 10 *quire the execution of satisfactory performance bonds,*
 11 *create receiverships, appoint conservators, custodians,*
 12 *appraisers, accountants, or trustees, or take any other*
 13 *action to seize, secure, maintain, or preserve the*
 14 *availability of property subject to civil forfeiture—*

15 “(A) *upon the filing of a civil forfeiture*
 16 *complaint alleging that the property with respect*
 17 *to which the order is sought is subject to civil*
 18 *forfeiture; or*

19 “(B) *prior to the filing of such a complaint,*
 20 *if, after notice to persons appearing to have an*
 21 *interest in the property and opportunity for a*
 22 *hearing, the court determines that—*

23 “(i) *there is a substantial probability*
 24 *that the United States will prevail on the*
 25 *issue of forfeiture and that failure to enter*

1 *the order will result in the property being*
2 *destroyed, removed from the jurisdiction of*
3 *the court, or otherwise made unavailable for*
4 *forfeiture; and*

5 *“(ii) the need to preserve the avail-*
6 *ability of the property through the entry of*
7 *the requested order outweighs the hardship*
8 *on any party against whom the order is to*
9 *be entered.*

10 *“(2) An order entered pursuant to paragraph*
11 *(1)(B) shall be effective for not more than 90 days,*
12 *unless extended by the court for good cause shown, or*
13 *unless a complaint described in paragraph (1)(A) has*
14 *been filed.*

15 *“(3) A temporary restraining order under this*
16 *subsection may be entered upon application of the*
17 *United States without notice or opportunity for a*
18 *hearing when a complaint has not yet been filed with*
19 *respect to the property, if the United States dem-*
20 *onstrates that there is probable cause to believe that*
21 *the property with respect to which the order is sought*
22 *is subject to civil forfeiture and that provision of no-*
23 *tice will jeopardize the availability of the property for*
24 *forfeiture. Such a temporary order shall expire not*
25 *more than 10 days after the date on which it is en-*

1 *tered, unless extended for good cause shown or unless*
 2 *the party against whom it is entered consents to an*
 3 *extension for a longer period. A hearing requested*
 4 *concerning an order entered under this paragraph*
 5 *shall be held at the earliest possible time and prior*
 6 *to the expiration of the temporary order.*

7 *“(4) The court may receive and consider, at a*
 8 *hearing held pursuant to this subsection, evidence and*
 9 *information that would be inadmissible under the*
 10 *Federal Rules of Evidence.”.*

11 **SEC. 10. COOPERATION AMONG FEDERAL PROSECUTORS.**

12 *Section 3322(a) of title 18, United States Code, is*
 13 *amended—*

14 *(1) by striking “civil forfeiture under section 981*
 15 *of title 18, United States Code, of property described*
 16 *in section 981(a)(1)(C) of such title” and inserting*
 17 *“any civil forfeiture provision of Federal law”; and*
 18 *(2) by striking “concerning a banking law viola-*
 19 *tion”.*

20 **SEC. 11. STATUTE OF LIMITATIONS FOR CIVIL FORFEITURE**
 21 **ACTIONS.**

22 *Section 621 of the Tariff Act of 1930 (19 U.S.C. 1621)*
 23 *is amended by inserting “, or in the case of forfeiture, with-*
 24 *in 2 years after the time when the involvement of the prop-*
 25 *erty in the alleged offense was discovered, whichever was*

1 later” after “within five years after the time when the al-
 2 leged offense was discovered”.

3 **SEC. 12. DESTRUCTION OR REMOVAL OF PROPERTY TO**
 4 **PREVENT SEIZURE.**

5 Section 2232 of title 18, United States Code, is
 6 amended—

7 (1) by striking subsections (a) and (b);

8 (2) by inserting “(e) FOREIGN INTELLIGENCE
 9 SURVEILLANCE.—” before “Whoever, having knowl-
 10 edge that a Federal officer”;

11 (3) by redesignating subsection (c) as subsection
 12 (d); and

13 (4) by inserting before subsection (d), as redesign-
 14 ated, the following:

15 “(a) DESTRUCTION OR REMOVAL OF PROPERTY TO
 16 PREVENT SEIZURE.—Whoever, before, during, or after any
 17 search for or seizure of property by any person authorized
 18 to make such search or seizure, knowingly destroys, dam-
 19 ages, wastes, disposes of, transfers, or otherwise takes any
 20 action, or knowingly attempts to destroy, damage, waste,
 21 dispose of, transfer, or otherwise take any action, for the
 22 purpose of preventing or impairing the Government’s law-
 23 ful authority to take such property into its custody or con-
 24 trol or to continue holding such property under its lawful

1 custody and control, shall be fined under this title or im-
 2 prisoned not more than 5 years, or both.

3 “(b) *IMPAIRMENT OF IN REM JURISDICTION.*—Who-
 4 ever, knowing that property is subject to the in rem jurisdic-
 5 tion of a United States court for purposes of civil forfeiture
 6 under Federal law, knowingly and without authority from
 7 that court, destroys, damages, wastes, disposes of, transfers,
 8 or otherwise takes any action, or knowingly attempts to de-
 9 stroy, damage, waste, dispose of, transfer, or otherwise take
 10 any action, for the purpose of impairing or defeating the
 11 court’s continuing in rem jurisdiction over the property,
 12 shall be fined under this title or imprisoned not more than
 13 5 years, or both.

14 “(c) *NOTICE OF SEARCH OR EXECUTION OF SEIZURE*
 15 *WARRANT OR WARRANT OF ARREST IN REM.*—Whoever,
 16 having knowledge that any person authorized to make
 17 searches and seizures, or to execute a seizure warrant or
 18 warrant of arrest in rem, in order to prevent the authorized
 19 seizing or securing of any person or property, gives notice
 20 or attempts to give notice in advance of the search, seizure,
 21 or execution of a seizure warrant or warrant of arrest in
 22 rem, to any person shall be fined under this title or impris-
 23 oned not more than 5 years, or both.”.

1 **SEC. 13. FUNGIBLE PROPERTY IN BANK ACCOUNTS.**

2 (a) *IN GENERAL.*—Section 984 of title 18, United
3 States Code, is amended—

4 (1) *by striking subsection (a) and redesignating*
5 *subsections (b), (c), and (d) as subsections (a), (b),*
6 *and (c), respectively;*

7 (2) *in subsection (a), as redesignated—*

8 (A) *by striking “or other fungible property”*
9 *and inserting “or precious metals”; and*

10 (B) *in paragraph (2), by striking “sub-*
11 *section (c)” and inserting “subsection (b)”;*

12 (3) *in subsection (c), as redesignated—*

13 (A) *by striking paragraph (1) and inserting*
14 *the following: “(1) Subsection (a) does not apply*
15 *to an action against funds held by a financial*
16 *institution in an interbank account unless the*
17 *account holder knowingly engaged in the offense*
18 *that is the basis for the forfeiture.”; and*

19 (B) *in paragraph (2), by striking “(2) As*
20 *used in this section, the term” and inserting the*
21 *following:*

22 “(2) *In this subsection—*

23 “(A) *the term ‘financial institution’ includes a*
24 *foreign bank (as defined in section 1(b)(7) of the*
25 *International Banking Act of 1978 (12 U.S.C.*
26 *3101(b)(7))); and*

1 “(B) the term”; and

2 (4) by adding at the end the following:

3 “(d) Nothing in this section may be construed to limit
4 the ability of the Government to forfeit property under any
5 provision of law if the property involved in the offense giv-
6 ing rise to the forfeiture or property traceable thereto is
7 available for forfeiture.”.

8 **SEC. 14. FUGITIVE DISENTITLEMENT.**

9 (a) *IN GENERAL.*—Chapter 163 of title 28, United
10 States Code, is amended by adding at the end the following:

11 **“§ 2466. Fugitive disentitlement**

12 “A judicial officer may disallow a person from using
13 the resources of the courts of the United States in further-
14 ance of a claim in any related civil forfeiture action or a
15 claim in third party proceedings in any related criminal
16 forfeiture action upon a finding that such person—

17 “(1) after notice or knowledge of the fact that a
18 warrant or process has been issued for his apprehen-
19 sion, in order to avoid criminal prosecution—

20 “(A) purposely leaves the jurisdiction of the
21 United States;

22 “(B) declines to enter or reenter the United
23 States to submit to its jurisdiction; or

1 “(C) otherwise evades the jurisdiction of the
2 court in which a criminal case is pending
3 against the person; and

4 “(2) is not confined or held in custody in any
5 other jurisdiction for commission of criminal conduct
6 in that jurisdiction.”.

7 (b) *CONFORMING AMENDMENT.*—The analysis for
8 chapter 163 of title 28, United States Code, is amended by
9 adding at the end the following:

 “2466. Fugitive disentitlement.”.

10 (c) *EFFECTIVE DATE.*—The amendments made by this
11 section shall apply to any case pending on or after the date
12 of enactment of this Act.

13 **SEC. 15. ENFORCEMENT OF FOREIGN FORFEITURE JUDG-**
14 **MENT.**

15 (a) *IN GENERAL.*—Chapter 163 of title 28, United
16 States Code, is amended by adding at the end the following:
17 **“§ 2467. Enforcement of foreign judgment**

18 “(a) *DEFINITIONS.*—In this section—

19 “(1) the term ‘foreign nation’ means a country
20 that has become a party to the United Nations Con-
21 vention Against Illicit Traffic in Narcotic Drugs and
22 Psychotropic Substances (referred to in this section as
23 the ‘United Nations Convention’) or a foreign juris-
24 diction with which the United States has a treaty or

1 *other formal international agreement in effect pro-*
2 *viding for mutual forfeiture assistance; and*

3 *“(2) the term ‘forfeiture or confiscation judg-*
4 *ment’ means a final order of a foreign nation compel-*
5 *ling a person or entity—*

6 *“(A) to pay a sum of money representing*
7 *the proceeds of an offense described in Article 3,*
8 *Paragraph 1, of the United Nations Convention,*
9 *or any foreign offense described in section*
10 *1956(c)(7)(B) of title 18, or property the value*
11 *of which corresponds to such proceeds; or*

12 *“(B) to forfeit property involved in or trace-*
13 *able to the commission of such offense.*

14 *“(b) REVIEW BY ATTORNEY GENERAL.—*

15 *“(1) IN GENERAL.—A foreign nation seeking to*
16 *have a forfeiture or confiscation judgment registered*
17 *and enforced by a district court of the United States*
18 *under this section shall first submit a request to the*
19 *Attorney General or the designee of the Attorney Gen-*
20 *eral, which request shall include—*

21 *“(A) a summary of the facts of the case and*
22 *a description of the proceedings that resulted in*
23 *the forfeiture or confiscation judgment;*

24 *“(B) certified copy of the forfeiture or con-*
25 *fiscation judgment;*

1 “(C) *an affidavit or sworn declaration es-*
2 *tablishing that the defendant received notice of*
3 *the proceedings in sufficient time to enable the*
4 *defendant to defend against the charges and that*
5 *the judgment rendered is in force and is not sub-*
6 *ject to appeal; and*

7 “(D) *such additional information and evi-*
8 *dence as may be required by the Attorney Gen-*
9 *eral or the designee of the Attorney General.*

10 “(2) *CERTIFICATION OF REQUEST.—The Attor-*
11 *ney General or the designee of the Attorney General*
12 *shall determine whether, in the interest of justice, to*
13 *certify the request, and such decision shall be final*
14 *and not subject to either judicial review or review*
15 *under subchapter II of chapter 5, or chapter 7, of title*
16 *5 (commonly known as the ‘Administrative Procedure*
17 *Act’).*

18 “(c) *JURISDICTION AND VENUE.—*

19 “(1) *IN GENERAL.—If the Attorney General or*
20 *the designee of the Attorney General certifies a request*
21 *under subsection (b), the United States may file an*
22 *application on behalf of a foreign nation in district*
23 *court of the United States seeking to enforce the for-*
24 *eign forfeiture or confiscation judgment as if the judg-*

1 *ment had been entered by a court in the United*
2 *States.*

3 *“(2) PROCEEDINGS.—In a proceeding filed under*
4 *paragraph (1)—*

5 *“(A) the United States shall be the appli-*
6 *cant and the defendant or another person or en-*
7 *tity affected by the forfeiture or confiscation*
8 *judgment shall be the respondent;*

9 *“(B) venue shall lie in the district court for*
10 *the District of Columbia or in any other district*
11 *in which the defendant or the property that may*
12 *be the basis for satisfaction of a judgment under*
13 *this section may be found; and*

14 *“(C) the district court shall have personal*
15 *jurisdiction over a defendant residing outside of*
16 *the United States if the defendant is served with*
17 *process in accordance with rule 4 of the Federal*
18 *Rules of Civil Procedure.*

19 *“(d) ENTRY AND ENFORCEMENT OF JUDGMENT.—*

20 *“(1) IN GENERAL.—The district court shall enter*
21 *such orders as may be necessary to enforce the judg-*
22 *ment on behalf of the foreign nation unless the court*
23 *finds that—*

24 *“(A) the judgment was rendered under a*
25 *system that provides tribunals or procedures in-*

1 *compatible with the requirements of due process*
2 *of law;*

3 “(B) *the foreign court lacked personal juris-*
4 *diction over the defendant;*

5 “(C) *the foreign court lacked jurisdiction*
6 *over the subject matter;*

7 “(D) *the defendant in the proceedings in the*
8 *foreign court did not receive notice of the pro-*
9 *ceedings in sufficient time to enable him or her*
10 *to defend; or*

11 “(E) *the judgment was obtained by fraud.*

12 “(2) *PROCESS.—Process to enforce a judgment*
13 *under this section shall be in accordance with rule*
14 *69(a) of the Federal Rules of Civil Procedure.*

15 “(e) *FINALITY OF FOREIGN FINDINGS.—In entering*
16 *orders to enforce the judgment, the court shall be bound by*
17 *the findings of fact to the extent that they are stated in*
18 *the foreign forfeiture or confiscation judgment.*

19 “(f) *CURRENCY CONVERSION.—The rate of exchange in*
20 *effect at the time the suit to enforce is filed by the foreign*
21 *nation shall be used in calculating the amount stated in*
22 *any forfeiture or confiscation judgment requiring the pay-*
23 *ment of a sum of money submitted for registration.”.*

1 (b) *CONFORMING AMENDMENT.*—*The analysis for*
 2 *chapter 163 of title 28, United States Code, is amended by*
 3 *adding at the end the following:*

“2467. Enforcement of foreign judgment.”.

4 **SEC. 16. ENCOURAGING USE OF CRIMINAL FORFEITURE AS**
 5 **AN ALTERNATIVE TO CIVIL FORFEITURE.**

6 *Section 2461 of title 28, United States Code, is amend-*
 7 *ed by adding at the end the following:*

8 *“(c) If a forfeiture of property is authorized in connection*
 9 *with a violation of an Act of Congress, and any person is*
 10 *charged in an indictment or information with such viola-*
 11 *tion but no specific statutory provision is made for crimi-*
 12 *nal forfeiture upon conviction, the Government may include*
 13 *the forfeiture in the indictment or information in accord-*
 14 *ance with the Federal Rules of Criminal Procedure, and*
 15 *upon conviction, the court shall order the forfeiture of the*
 16 *property in accordance with the procedures set forth in sec-*
 17 *tion 413 of the Controlled Substances Act (21 U.S.C. 853),*
 18 *other than subsection (d) of that section.”.*

19 **SEC. 17. ACCESS TO RECORDS IN BANK SECRECY JURISDIC-**
 20 **TIONS.**

21 *Section 986 of title 18, United States Code, is amended*
 22 *by adding at the end the following:*

23 *“(d) ACCESS TO RECORDS IN BANK SECRECY JURIS-*
 24 *DICTIONS.—*

1 “(1) *IN GENERAL.*—*In any civil forfeiture case,*
2 *or in any ancillary proceeding in any criminal for-*
3 *feiture case governed by section 413(n) of the Con-*
4 *trolled Substances Act (21 U.S.C. 853(n)), in which—*

5 “(A) *financial records located in a foreign*
6 *country may be material—*

7 “(i) *to any claim or to the ability of*
8 *the Government to respond to such claim; or*

9 “(ii) *in a civil forfeiture case, to the*
10 *ability of the Government to establish the*
11 *forfeitability of the property; and*

12 “(B) *it is within the capacity of the claim-*
13 *ant to waive the claimant’s rights under appli-*
14 *cable financial secrecy laws, or to obtain the*
15 *records so that such records can be made avail-*
16 *able notwithstanding such secrecy laws;*

17 *the refusal of the claimant to provide the records in*
18 *response to a discovery request or to take the action*
19 *necessary otherwise to make the records available*
20 *shall be grounds for judicial sanctions, up to and in-*
21 *cluding dismissal of the claim with prejudice.*

22 “(2) *PRIVILEGE.*—*This subsection shall not affect*
23 *the right of the claimant to refuse production on the*
24 *basis of any privilege guaranteed by the Constitution*

1 *of the United States or any other provision of Federal*
 2 *law.”.*

3 **SEC. 18. APPLICATION TO ALIEN SMUGGLING OFFENSES.**

4 *(a) AMENDMENT OF THE IMMIGRATION AND NATION-*
 5 *ALITY ACT.—Section 274(b) of the Immigration and Na-*
 6 *tionality Act (8 U.S.C. 1324(b)) is amended to read as fol-*
 7 *lows:*

8 *“(b) SEIZURE AND FORFEITURE.—*

9 *“(1) IN GENERAL.—Any conveyance, including*
 10 *any vessel, vehicle, or aircraft, that has been or is*
 11 *being used in the commission of a violation of sub-*
 12 *section (a), the gross proceeds of such violation, and*
 13 *any property traceable to such conveyance or pro-*
 14 *ceeds, shall be seized and subject to forfeiture.*

15 *“(2) APPLICABLE PROCEDURES.—Seizures and*
 16 *forfeitures under this subsection shall be governed by*
 17 *the provisions of chapter 46 of title 18, United States*
 18 *Code, relating to civil forfeitures, including section*
 19 *981(d) of such title, except that such duties as are im-*
 20 *posed upon the Secretary of the Treasury under the*
 21 *customs laws described in that section shall be per-*
 22 *formed by such officers, agents, and other persons as*
 23 *may be designated for that purpose by the Attorney*
 24 *General.*

1 “(3) *PRIMA FACIE EVIDENCE IN DETERMINA-*
2 *TIONS OF VIOLATIONS.*—*In determining whether a*
3 *violation of subsection (a) has occurred, any of the*
4 *following shall be prima facie evidence that an alien*
5 *involved in the alleged violation had not received*
6 *prior official authorization to come to, enter, or reside*
7 *in the United States or that such alien had come to,*
8 *entered, or remained in the United States in violation*
9 *of law:*

10 “(A) *Records of any judicial or administra-*
11 *tive proceeding in which that alien’s status was*
12 *an issue and in which it was determined that*
13 *the alien had not received prior official author-*
14 *ization to come to, enter, or reside in the United*
15 *States or that such alien had come to, entered,*
16 *or remained in the United States in violation of*
17 *law.*

18 “(B) *Official records of the Service or of the*
19 *Department of State showing that the alien had*
20 *not received prior official authorization to come*
21 *to, enter, or reside in the United States or that*
22 *such alien had come to, entered, or remained in*
23 *the United States in violation of law.*

24 “(C) *Testimony, by an immigration officer*
25 *having personal knowledge of the facts con-*

cerning that alien’s status, that the alien had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law.”.

(b) *TECHNICAL CORRECTIONS TO EXISTING CRIMINAL FORFEITURE AUTHORITY*.—Section 982(a)(6) of title 18, United States Code, is amended—

(1) in subparagraph (A)—

(A) by inserting “section 274(a), 274A(a)(1), or 274A(a)(2) of the Immigration and Nationality Act or” before “section 1425” the first place it appears;

(B) in clause (i), by striking “a violation of, or a conspiracy to violate, subsection (a)” and inserting “the offense of which the person is convicted”; and

(C) in subclauses (I) and (II) of clause (ii), by striking “a violation of, or a conspiracy to violate, subsection (a)” and all that follows through “of this title” each place it appears and inserting “the offense of which the person is convicted”;

(2) by striking subparagraph (B); and

(3) in the second sentence—

1 (A) by striking “The court, in imposing
2 sentence on such person” and inserting the fol-
3 lowing:

4 “(B) The court, in imposing sentence on a per-
5 son described in subparagraph (A)”; and

6 (B) by striking “this subparagraph” and
7 inserting “that subparagraph”.

8 **SEC. 19. ENHANCED VISIBILITY OF THE ASSET FORFEITURE**
9 **PROGRAM.**

10 Section 524(c)(6) of title 28, United States Code, is
11 amended to read as follows:

12 “(6)(A) The Attorney General shall transmit to Con-
13 gress and make available to the public, not later than 4
14 months after the end of each fiscal year, detailed reports
15 for the prior fiscal year as follows:

16 “(i) A report on total deposits to the Fund by
17 State of deposit.

18 “(ii) A report on total expenses paid from the
19 Fund, by category of expense and recipient agency,
20 including equitable sharing payments.

21 “(iii) A report describing the number, value, and
22 types of properties placed into official use by Federal
23 agencies, by recipient agency.

1 “(iv) *A report describing the number, value, and*
2 *types of properties transferred to State and local law*
3 *enforcement agencies, by recipient agency.*

4 “(v) *A report, by type of disposition, describing*
5 *the number, value, and types of forfeited property dis-*
6 *posed of during the year.*

7 “(vi) *A report on the year-end inventory of prop-*
8 *erty under seizure, but not yet forfeited, that reflects*
9 *the type of property, its estimated value, and the esti-*
10 *mated value of liens and mortgages outstanding on*
11 *the property.*

12 “(vii) *A report listing each property in the year-*
13 *end inventory, not yet forfeited, with an outstanding*
14 *equity of not less than \$1,000,000.*

15 “(B) *The Attorney General shall transmit to Congress*
16 *and make available to the public, not later than 2 months*
17 *after final issuance, the audited financial statements for*
18 *each fiscal year for the Fund.*

19 “(C) *Reports under subparagraph (A) shall include in-*
20 *formation with respect to all forfeitures under any law en-*
21 *forced or administered by the Department of Justice.*

22 “(D) *The transmittal and publication requirements in*
23 *subparagraphs (A) and (B) may be satisfied by—*

1 “(i) posting the reports on an Internet website
2 maintained by the Department of Justice for a period
3 of not less than 2 years; and

4 “(ii) notifying the Committees on the Judiciary
5 of the House of Representatives and the Senate when
6 the reports are available electronically.”.

7 **SEC. 20. PROCEEDS.**

8 (a) **FORFEITURE OF PROCEEDS.**—Section
9 981(a)(1)(C) of title 18, United States Code, is amended
10 by striking “or a violation of section 1341” and all that
11 follows and inserting “or any offense constituting ‘specified
12 unlawful activity’ (as defined in section 1956(c)(7) of this
13 title), or a conspiracy to commit such offense.”.

14 (b) **DEFINITION OF PROCEEDS.**—Section 981(a) of
15 title 18, United States Code, is amended by adding at the
16 end the following:

17 “(2) For purposes of paragraph (1), the term ‘proceeds’
18 is defined as follows:

19 “(A) In cases involving illegal goods, illegal serv-
20 ices, unlawful activities, and telemarketing and health
21 care fraud schemes, the term ‘proceeds’ means prop-
22 erty of any kind obtained directly or indirectly, as
23 the result of the commission of the offense giving rise
24 to forfeiture, and any property traceable thereto, and

1 *is not limited to the net gain or profit realized from*
2 *the offense.*

3 *“(B) In cases involving lawful goods or lawful*
4 *services that are sold or provided in an illegal man-*
5 *ner, the term ‘proceeds’ means the amount of money*
6 *acquired through the illegal transactions resulting in*
7 *the forfeiture, less the direct costs incurred in pro-*
8 *viding the goods or services. The claimant shall have*
9 *the burden of proof with respect to the issue of direct*
10 *costs. The direct costs shall not include any part of*
11 *the overhead expenses of the entity providing the*
12 *goods or services, or any part of the income taxes*
13 *paid by the entity.*

14 *“(C) In cases involving fraud in the process of*
15 *obtaining a loan or extension of credit, the court shall*
16 *allow the claimant a deduction from the forfeiture to*
17 *the extent that the loan was repaid, or the debt was*
18 *satisfied, without any financial loss to the victim.”.*

19 **SEC. 21. EFFECTIVE DATE.**

20 *Except as provided in section 14(c), this Act and the*
21 *amendments made by this Act shall apply to any forfeiture*
22 *proceeding commenced on or after the date that is 120 days*
23 *after the date of enactment of this Act.*